



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

HUGH CRAIG LUSSARDI,
a/k/a Hugh Creighton Lussardi,
Petitioner,

vs.

WARDEN, Broad River Correctional
Institution,
Respondent.

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CIVIL ACTION NO. 8:09-916-HFF-BHH

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that this action be dismissed *with prejudice* for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 22, 2009, and the Clerk of Court entered Petitioner's objections to the Report on September 28, 2009. In those objections, Petitioner indicated that he did not wish to abandon this suit. Thus, by Order filed on the same day that the objections were entered, Petitioner was given an additional ten days to file his response to Respondent's motion for summary judgment. He was advised that "[i]f he fails to file his response during that time, the action will be dismissed for a failure to prosecute and to comply with the Court's orders. Such dismissal will be with prejudice." (September 28, 2009, Order.) As of this date, twenty-one days after the Court filed the above-referenced Order, Petitioner has not submitted his response. Therefore, dismissal is appropriate.

Having made a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that this action be dismissed *with prejudice* for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982).

IT IS SO ORDERED.

Signed this 19th day of October, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.